

(2008) 04 CHH CK 0017
In the Chhattisgarh High Court
Case No : Writ Petition No. 2480 of 2003

Agarbati Bai (Smt.)

APPELLANT

Vs

Joint Director Medical and Health Services

RESPONDENT

Date of Decision : 28-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 4 MPJR 40

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Parag Kotchla, for the Appellant; P. Diwakar with Mr. Ashish Surana, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.

The Petitioner, by this petition, filed under Article 226/227 of the Constitution of India, seeks a declaration that the date of birth of the Petitioner be declared as on 09.02.1947 and consequently, the notice dated 11/12th March, 2003 (Annexure P/1) retiring the Petitioner from

service w.e.f. 31.08.2003 as well as order dated 12/17th July, 2003 (Annexure P/2) whereby the Petitioner on attaining the age of superannuation on 31.08.2003 was directed to submit details for payment of C.P.F., gratuity etc., be quashed.

The brief facts, in nutshell, are that the Petitioner was appointed as Hospital Attendant (Sanitary) Grade II in Jawaharlal Nehru Medical and Research Centre, Bilai by the Respondents. The Petitioner made a declaration that on the date of appointment, her age was 29 years. Later on, the Petitioner arranged a certificate issued from the office of the Registrar (Birth and Death Registration) Rajnandgaon on 09.05.2003 (Annexure P/4), wherein her date of birth was stated to be 09.02.1947. The Petitioner claims correction in her date of birth as

09.02.1947 in place of 13.08.1943, which was initially recorded in her service book. Thus, the petition.

Shri Parag Kotecha, learned Counsel appearing for the Petitioner would submit that the Petitioner being illiterate could not obtain the birth certificate from the office of the Registrar (Birth and Death Registration), Rajnandgaon, in time. The same could be obtained only on 09.05.2003 wherein it was found that her date of birth was 09.02.1947 and not 13.08.1943, on the basis of which the Petitioner was directed to retire from service on attaining the age of 60 years w.e.f. 31.08.2003.

Per contra, Shri P. Diwakar, learned Senior counsel appearing for the Respondents would submit that the Petitioner was medically examined on 13.08.1972 by the Senior Industrial Medical Officer at the time of her initial appointment and it was found that her age was 29 years (Annexure R/1). Accordingly, her date of birth was recorded in the service book as 13.08.1943 (Annexure R/2). The Petitioner had obtained birth certificate after receiving the superannuation notice dated 11/12th March, 2003 on 09.05.2003 (Annexure P/4). The Petitioner was medically examined on 04.12.1990 and at that point of time also, the medical report reported her date of birth as 13.08.1943 (Annexure R/4). The Petitioner was thereafter regularized in S-1 grade by order dated 06.10.1995. At the time of regularization, she was further examined medically on 20.10.1995 (Annexure R/5). The same age as recorded in the service book and attestation forms. As per medical certificate dated 20.10.1995 (Annexure R/5) her age was 52 years. The petition was required to submit a fresh attestation form on her regularization and in the said regularization form dated 12.11.1995, the Petitioner stated her date of birth as 13.08.1943 (Annexure R/6). Part II of the service record was issued on 17th November, 1995 (Annexure R/7) wherein the Petitioner's date of birth was shown as 13.08.1943. The Petitioner knew about her date of birth before superannuation notice was received by the Petitioner. Thus, it is well settled that at the fag end of service career, the date of birth could not be modified or corrected.

I have considered rival contentions of the learned Counsel appearing for the parties, perused the pleadings and documents appended thereto. It is evident that the Petitioner has raised for the first time question of correction of date of birth after receipt of superannuation notice dated 11/12th March, 2003. Thereafter, the instant petition was filed on 13.08.2003. During the pendency of the petition, the Petitioner obtained birth certificate from the office of the Registrar (Birth and Death Registration) Rajnandgaon, wherein her date of birth was registered on 09.05.2003 (Annexure P/4). The registration itself after a long period, on 09.05.2003 creates doubt about the bonafide of the registration certificate. It is also not clear on what basis the birth certificate was issued as no material has been produced to establish the case of the Petitioner. The registration authority has not recorded the date of birth of the Petitioner, after having examined the case of the Petitioner, in accordance with law. The Petitioner

was examined by the Medical Board on several dates i.e. 13.08.1972, 04.12.1990 and 20.10.1995 and thereafter, her age as per date of birth dated 13.08.1943 was found to be correct.

The contention of Shri Kotecha, that since the genuineness of the birth certificate dated 09.05.2003 has not been denied by the Respondents the same should be accepted as it is.

The Court cannot close its eyes when on the face of it the genuineness of the birth certificate appears to be doubtful as Shri Kotecha has failed to establish that what prevented the Petitioner from obtaining the birth certificate throughout from the date of her initial appointment till superannuation notice was received in the month of March, 2003.

Reliance of Shri Kotecha on Rule 4.4 that the date of birth of an employee is to be proved by birth certificate is correct but in the facts of the case when the birth certificate itself is doubtful, this cannot be the final basis for determination of the date of birth of the Petitioner. The request of the Petitioner for referring the matter once again to the Medical Examination Board cannot be accepted as the Director, Medical and Health Services, Respondent No. 1, has filed an affidavit to the effect that as per medical science, it is not possible to assess the correct age of a lady after 55 years of her age even by the radiological methods, by the Medical Board. The case of the Petitioner was examined by the Medical Board on several occasions during the course of her service and there was no change in her age as calculated on the basis of her date of birth i.e. 13.08.1943.

In the matter of Secretary and Commissioner, Home Department and others Vs. R. Kirubakaran, the Supreme Court has held as under:

7. An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us, this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the Respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible...

In the matter of State of U.P. and Others Vs. Smt. Gulaichi, the Supreme Court

held as under:

8. Normally, in public service, with entering into service, even the date of exit, which is said as the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service-book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, it is necessary to maintain the date of birth in the service records. But, of late a trend can be noticed, that many public servants, on the eve of their retirement raise a dispute about their records, by either invoking the jurisdiction of the High Court under Article 226 of the Constitution of India or by filing applications before the Administrative Tribunals concerned, or even filing suits for adjudication as to whether the dates of birth recorded were correct or not.

The ratio laid down by the Supreme Court with regard to correction of date of birth in service record in the matter of Secretary & Commissioner, Home Department (supra) has been subsequently followed in the matter of State of Gujarat and Others Vs. Vali Mohamed Dosabhai Sindhi, .

In the matter of Seema Ghosh Vs. Tata Iron and Steel Company, it was held that in absence of challenge to the opinion of the Medical Board, the Petitioner is estopped from challenging the correctness of the opinion of the Medical Board after his retirement.

Applying the well settled principles of law as laid down by the Supreme Court to the facts of the case, where the Petitioner was examined by the Medical Board on 13.08.1972, 04.12.1990 and 20.10.1995 her age was recorded accordingly holding the date of birth of the Petitioner as 13.08.1943. The Petitioner has not produced any document which is irrefutable and the substantial proof to establish the date of birth as on 09.02.1947. The instant declaration as prayed by the Petitioner, even otherwise cannot be issued in exercise of its power under Article 226 of the Constitution that the date of birth of the Petitioner to be held as 09.02.1947.

In view of the foregoing and for the reasons mentioned hereinabove, this petition is dismissed. No order as to costs.